

UNDERSTANDING CONTRACTS

This information is provided as a basic overview of the different types of contracts used and explains the authority that agencies have when issuing their own contracts. It does not describe the procedures pertaining to contract creation and administration, but does detail the rules that must be followed when contracting.

1. Definition

A contract is merely a written agreement for the acquisition of property or services that defines the relationship and duties and obligations of the parties to it. Most commonly the term is used to describe term contracts, definite or indefinite quantity/indefinite delivery contracts, or other acquisition agreements whose subject matter involves multiple payments and deliveries. Contracts include a description of the item or service solicited, terms and conditions, amendments, the vendor's signed bid or proposal and the signed document by the purchasing official indicating acceptance.

2. Types of Contracts

The Division of Purchasing develops, bids, and awards statewide contracts, single agency contracts, lease contracts, service contracts, and price agreements.

Agencies may create their own contracts with the following conditions:

- Purchase of Supplies: the total cost of the contract may not exceed the agency's delegated purchasing authority, including any renewals and/or extensions.
- Leases: must not exceed one (1) year in length and cannot exceed the agency's delegated purchasing authority.
- Professional and Consultant Services: Must not exceed one (1) year and exceed \$50,000.
- Information Technology Services: Must not exceed one (1) year and exceed \$50,000.
- Other Services: the total cost must not exceed the agency's delegated authority, including any renewals and/or extensions.
- Price Agreements: non-exclusive price agreements may not exceed two (2) years in length and require authorization by the Division of Purchasing.

3. Statewide Contracts

Statewide or Open Contracts are items or services that are universally used by the majority of state agencies. They include such items as paper and plastics (hand towels, toilet tissue, plastic trash can liners), car batteries, office supplies, envelopes, business cards, tires, paint, photocopiers, vehicles and information technology (computers, telephones). A complete list of statewide contracts is available on the Idaho Purchasing Homepage web site.

How does the Division of Purchasing determine what goes on a statewide contract? There are four major considerations:

- Is it a product or service used by all or most state agencies?

- Is the product or service universally available and biddable?
- Will the combining of usage figures from all agencies on a contract result in a savings to the state?
- Is there a method for delivery or distribution available statewide?

Most statewide contracts are *mandatory use* meaning that they must be used by agencies purchasing the specific product or service. *Idaho Code 67-5726 Prohibitions* says, in part: "No officer or employee shall fail to utilize an open contract without justifiable cause for such action." Some statewide contracts are optional use and others have conditions such as delivery areas and minimum quantities that enable the agency to decline participation in the contract. Most statewide contracts also have a public agency clause that allows cities and political subdivisions of the state (school districts, counties, highway districts, etc.) to access the contract.

4. Single Agency Contracts

These types of contracts are generally for the exclusive use of an individual agency, although they may also have a public agency clause. Specifications for single agency blanket contracts for commodities are developed by the agency and reviewed and bid by the Division of Purchasing. Agencies may enter into single or multiple year service contracts provided they do not exceed delegated authority limits, including contract renewals and/or extensions. Agencies are cautioned to include the Standard Idaho Terms and Conditions and, where applicable, the Idaho Standard Computer Hardware and Software Special Terms and Conditions as part of their quotation and contract documents.

5. Price Agreements

A price agreement is another method of contracting with a vendor for products or services authorized by the Division of Purchasing. Price agreements are non-exclusive (not mandatory use) written agreements between a vendor and an individual agency or group of agencies specifying a product or list of products or services offered at an agreed upon price or discount. They are not competitively bid. Such agreements are appropriate when:

- The dollar amount of items or transactions are relatively small;
- The property may not be conducive to standard competitive bidding procedures;
- There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function, but is represented by different manufacturers and/or needed in multiple locations; and
- Non-exclusive agreements for periods not exceeding two years are deemed necessary to establish consistent general business terms such as price, use of catalogs, delivery terms, credit terms, etc.

Examples of price agreements are auto parts for the Department of Transportation, aircraft rental for the Department of Fish and Game and personal clothing and small household items for Department of Health and Welfare state hospital clients. The Division of Purchasing also establishes price agreements for use by all agencies such as auto rentals and court reporters.

Agencies may negotiate their own price agreements not to exceed two (2) years in duration. The agreements must provide for termination for any reason upon not more than thirty (30) days written notice. All price agreements must be sent to the Division of Purchasing for review and final

approval. The Division of Purchasing has Standard Terms and Conditions for Price Agreements available for agency use. The Division of Purchasing establishes statewide price agreements for use by all agencies such as auto rentals and court reporters.

6. Leases

A lease is a contract for the use of property under which title to the property does not pass to the state agency. Individual agencies may enter into leases provided that the lease cost is within their delegated authority and for a period less than one (1) year, subject to the same requirements of competition that govern the purchase of property. All leases exceeding one year are required to be processed by the Division of Purchasing

The Division of Purchasing currently has *mandatory* statewide lease contracts for photocopiers, facsimile machines and vehicles.

7. Lease with Purchase Option

A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded using the competitive bidding process. Before exercising such an option, the agency must:

- investigate alternative means of acquiring comparable property; and
- compare estimated costs and benefits associated with the alternative means and the exercise of the option; for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option; and
- provide notice and advertisement of the exercise of option in accordance with these rules pertaining to sole source or competitively bid the property by soliciting bids for new or used property.

All requests to exercise lease purchase options must be approved by the Division of Purchasing.

8. Time Purchase Contracts

The Division of Purchasing bids and enters into all Time Purchase or Installment Payments Contracts with the following conditions:

- Such contract is in the best interest of the agency. Installment payments should be used judiciously in order to achieve economy and not to avoid budgetary restraints.
- Using agencies shall be responsible for ensuring that all statutory or other applicable requirements are met and that all budgetary or other required approvals are obtained.
- Documentation of any required approval shall be submitted to the Division of Purchasing with the requisition.
- Provision for installment payments must be included in the solicitation.
- An installment or time purchase contract shall include appropriate language stating that the agency is not obligated to make payments beyond the term of any particular appropriation of state or federal funds that may exist from time to time and that the contract may be terminated upon such without any penalty or future liability.

9. Personal and General Service Contracts

Procurement of personal and general service contracts (janitorial, yard care, maintenance agreements, etc.) fall under the same purchasing rules and dollar threshold bidding requirements as informal Requests for Quotations and formal, sealed Invitation To Bids and Request For Proposals.

Agencies may enter into personal and general service contracts provided that the total cost does not exceed the agency's delegated authority, including renewals and/or extensions.

10. Professional and Consultant Services

Professional and Consultant services, where the services are reasonably expected to cost fifty thousand dollars (\$50,000) or less through a fixed price/not to exceed price contract for a term not exceeding one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state.

Consultant Services: work, rendered by either independent individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning and data processing. The consultant's services, opinions, or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work.

Professional Services: work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training, which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

11. Information Technology Services

Information Technology services, where the services are reasonably expected to cost fifty thousand dollars (\$50,000) or less through a fixed price/not to exceed price contract for a term not exceeding one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state.

Information Technology Property: includes, but is not limited to, all present and future forms of computer hardware, computer software, or services used or required for automated data processing, computer related office automation or telecommunications.

Because of the complexity of information technology purchasing, the Division of Purchasing has an Information Technology Purchasing Officer specialist to assist agencies to ensure that the most expedient and cost-effective method of purchasing is deployed. The IT Purchasing Officer is available to help you develop specifications, create Request For Proposals, and in conjunction with the Information Technology Resource Management Council (ITRMC) project team, make purchasing recommendations

12. Division of Purchasing Rules Pertaining to Contracts

IDAPA 38.05.01

011. DEFINITIONS.

13. Contract. Contract means any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract shall also include any amendments mutually agreed upon by both parties.

14. Contractor. A bidder or offeror who has been awarded an acquisition contract.

41. Services. Personal, general, professional or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competition is not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices.

46. State Or Statewide Contract. Contracts for property or services administered by the division on behalf of or for the benefit of an agency. Statewide contracts apply to more than one (1) agency. The contract document will identify the conditions under which usage by agencies is required.

47. Supplies. Items of personal property having an expendable quality or during their normal use are consumed and that require or suggest acquisition in bulk.

042. EXCEPTIONS TO FORMAL SEALED PROCEDURE.

Purchases meeting the following criteria need not be purchased by the formal sealed procedure:

09. Existing State Or Statewide Contracts. Supplies, services or other property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof.

044. SMALL PURCHASES.

06. Statewide Contracts. Property available under single agency or statewide contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator.

07. Professional, Consultant and Information Technology Services. Professional, consultant and information technology services acquired under this rule, where the services are reasonably expected to cost fifty thousand dollars (\$50,000) or less through a fixed price/not to exceed price contract for a term not exceeding one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state.

053. PRICE ESCALATION.

Contractors shall not be entitled to price escalation except where specifically provided for in writing in the contract or purchase order.

081. EVALUATION AND AWARD.

Any contract award shall comply with these provisions.

01. General. The contract is to be awarded to the lowest responsible and responsive bidder or offeror. The solicitation shall set forth the requirements and criteria that will be used to make the lowest responsive and responsible determination. No submission shall be evaluated for any requirements or criteria that are not disclosed in the solicitation.

02. Standards Of Responsibility. Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase, provided that these additional standards are set forth in the solicitation. Factors to be considered in determining whether a vendor is responsible include whether the vendor has:

- a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;
- b. A satisfactory record of integrity;
- c. Qualified legally to contract with the purchasing activity and qualified to do business in the state of Idaho;
- d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility;
- e. Experience; or
- f. A prior performance record, if any.

03. Information Pertaining To Responsibility. A submitting vendor shall supply information requested by the buyer concerning its responsibility. If such submitting vendor fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the submitting vendor nonresponsible if such failure is unreasonable.

04. Written Determination of Nonresponsibility Required. If a submitting vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer.

05. Extension Of Time For Acceptance. After opening, the buyer may request submitting vendors to extend the time during which their bids or proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.

06. Partial Award. A buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a bid, excluding others, unless the bidder stipulates all or nothing in its bid.

07. Only One Submission Received. If only one (1) responsive submission is received in response to a solicitation, an award may be made to the single submitting vendor. In addition, the buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the solicitation may be rejected and:

- a. New bids or offers may be solicited; or
- b. The proposed acquisition may be canceled.

084. NEGOTIATIONS.

In accordance with Section 67-5717(12), Idaho Code, the administrator may negotiate acquisitions as follows:

01. Price Agreements. The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed appropriate. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be appropriate when:

- a. The dollar value of items or transactions is relatively small;
- b. The property may not be conducive to standard competitive bidding procedures, such as automobile, truck or other equipment parts having individual low unit costs;
- c. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or
- d. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms.

101. LEASES.

01. Lease For Personal Property. A lease for personal property may be entered into provided the lease is subject to the same requirements of competition that govern the purchase of property. Leases for periods exceeding one (1) year specifically require the approval of the administrator.

02. Lease Purchase Option. Unless a specific exemption is granted by the administrator or unless otherwise exempt by these rules, a lease purchase option may be exercised only if the lease containing the purchase option was awarded using the competitive process. Before exercising such an option, the buyer shall meet all applicable requirements of Section 67-5721, Idaho Code, including providing notice of the exercise of option as a sole source or competitively bidding the property by soliciting bids for new or used property.

102. TIME PURCHASE CONTRACTS.

01. Time Purchase For Personal Property. A time purchase or installment contract, that may include interest charges over a period of time, may be entered into provided

- a. Such contract is in the best interest of the agency. Installment payments should be used judiciously in order to achieve economy and not to avoid budgetary restraints.
- b. Using agencies shall be responsible for ensuring that all statutory or other applicable requirements are met and that all budgetary or other required approvals are obtained.
- c. Documentation of any required approval shall be submitted to the division with any required requisition.
- d. Provision for installment payments must be included in the solicitation.

02. Lack of Fund Contract Language Required. An installment or time purchase contract shall include appropriate language stating that the agency is not obligated to

make payments beyond the term of any particular appropriation of state or federal funds that may exist from time to time and that the contract may be terminated upon such without any penalty or future liability.